

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

LORRAINE A. EIVAZIANS,

License No. 5464

Respondent.

Case No. R-1991

OAH No. N2005090653

DECISION AFTER NONADOPTION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 12, 2005. Catherine E. Santillan, Senior Legal Analyst, represented complainant. Respondent was present and represented herself. The matter was submitted on December 12, 2005. On December 27, 2005, the Respiratory Care Board ("Board") received the Proposed Decision of the Administrative Law Judge. On January 25, 2006, the Board issued a Notice of Nonadoption of Proposed Decision. On March 20, 2006, the Board received the transcript and exhibits from the hearing. After review of the transcript, exhibits, and written argument, the Board hereby renders the following Decision After Nonadoption:

FACTUAL FINDINGS

1. Stephanie Nunez made this petition to revoke probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.
2. On June 28, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 5464 to Lorraine A. Fowler, also known as Lorraine A. Eivazians. The Respiratory Care Practitioner License will expire April 30, 2008.
3. On August 4, 2005, this Petition to Revoke Probation, Case No. R-1991 was filed against respondent based on her failure to comply with the terms and conditions of

probation imposed in Case No. R-1891, which became effective August 9, 2004. In that case respondent's respiratory care license was revoked. However, the revocation was stayed and respondent was placed on probation for a period of two years upon certain terms and conditions, including biological fluid testing, abstaining from mood altering substances, submitting quarterly reports, paying probation monitoring costs and paying cost recovery. The disciplinary action was taken against respondent based on a July 21, 2003 conviction of Vehicle Code section 23152, subdivision (b) (Driving while having a blood alcohol level of .08 percent or more). She had a blood alcohol level of .18 percent.

4. Respondent failed to comply with Condition 2 of her probation that required her to submit to biological fluid testing. Respondent was informed that the Board had contracted with Compass Vision, Inc. (CVI) to perform random testing, collection and analysis of biological fluids. She was informed that she was responsible for telephoning an automated, toll free number on a daily basis to determine if she was required to report to a collection site for testing. The date and time of all calls made to the system are logged into CVI's database.

On April 15, 2005, respondent telephoned CVI as required and was directed to provide a specimen. Respondent failed to report for testing. In mitigation, respondent was on vacation at the time. She did have vacation indicated on the schedule that she supplied to the Board. However, she was required to request vacation, in writing, two weeks in advance. Respondent faxed in a request for vacation on April 15, 2005.

5. Respondent failed to comply with Condition 3 of her probation that required her to abstain from mood altering substances including alcohol. CVI conducts ethyl glucoronide (EtG) testing that is a biological marker for alcohol use and can be detected in urine for up to five days after alcohol use.

On September 20, 2004, respondent provided a specimen for testing and analysis that tested positive for EtG in the amount of 1480 nanograms per milliliter. The cut-off for detecting alcohol use is anything above 250 nanograms per milliliter. In an interview with the Medical Review Officer, respondent admitted that she drank a glass of wine. Respondent confirmed that admission at the hearing.

On November 30, 2004, respondent provided a specimen for testing and analysis that was positive for EtG in the amount of 440 nanograms per milliliter. Respondent claimed that it was based on her using NyQuil (an over-the-counter cold medicine) to help her sleep. It was established by expert testimony that the use of NyQuil as directed on the container would not result in a positive specimen. Respondent was told by the Medical Review Officer not to use NyQuil.

On February 9, 2005, respondent provided a specimen for testing and analysis that was positive for EtG in the amount of 820 Nanograms per milliliter. Again, respondent claimed that this was based on her use of NyQuil. Respondent confirmed at the hearing that she was told by the Medical Review Officer to stop taking NyQuil.

On May 6, 2005, respondent submitted a specimen for testing and analysis that was positive for EtG in the amount of 3100 nanograms per milliliter. On September 15, 2005, respondent submitted a specimen for testing and analysis that was positive for EtG in the amount of 10,000 nanograms per milliliter. On November 17, 2005, respondent submitted a specimen of testing and analysis that was positive for EtG in the amount of 280 nanograms per milliliter. Respondent did not provide a credible explanation for any of the positive specimens. At the hearing she indicated that she did not want to incriminate herself. She denied consuming alcoholic beverages. However, the expert testimony established that the consumption of alcoholic beverages is the only way to obtaining these levels of test results.

6. Respondent failed to comply with Condition 5 of her probationary order in that she was required to file quarterly reports of compliance under penalty of perjury. She failed to provide a quarterly report for April 1 through June 30, 2005, that was due between July 1 and July 7, 2005. She also failed to provide a quarterly report for July 1 through September 30, 2005, that was due between October 1 and 7, 2005. Respondent indicated that she would submit those quarterly reports shortly after the hearing.

7. Respondent failed to comply with Condition 7 of her probationary order in that she was required to pay the costs of probation monitoring in the amount of \$100 per month for April through October 2005. She is currently in arrears \$600. Respondent indicated that she would become current by the end of January 2006.

8. Respondent failed to comply with Condition 11 of her probationary order in that she was required to pay \$910 in cost recovery in equal quarterly payments within the first 12 months of probation. She failed to make quarterly payments of \$227.50 for February, May or August, 2005. She is currently in arrears \$682.50. Respondent indicated that she would become current by the end of January 2006.

9. In mitigation, respondent has been licensed for over 20 years and presented a recent positive evaluation from her employer. While there was no evidence presented that her problem with alcohol has ever interfered with her activities as a respiratory care practitioner, the potential for harm to patients is significant. In aggravation, respondent is in denial of her alcohol problem. She lacks insight and understanding of this problem and has yet to successfully complete a recovery program. Also of concern to the Board is her repeated violations of her probation terms. On balance, the evidence weighs in favor of revoking her license.

10. Costs in that amount of \$8,740 for the investigation and prosecution of this case are allowed. This includes the services of an expert concerning the biological fluid testing.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 4 and 5, cause for revocation of respondent's probation exists pursuant to violation of probation conditions 2 and 3 (biological fluid testing and abstaining from the use of mind altering substances) and Business and Professions Code sections 3710, 3718, 3753 and 3754.

2. By reason of the matters set forth in Finding 6, cause for revocation of respondent's probation exists pursuant to violation of probation condition 5 (quarterly reports) and Business and Professions Code sections 3710, 3718, 3753 and 3754.

3. By reason of the matters set forth in Findings 7 and 8, cause for revocation of respondent's probation exists pursuant to violation of probation conditions 7 and 11 (probation monitoring costs and cost recovery) and Business and Professions Code sections 3710, 3718, 3753 and 3754.

4. By reason of the matters set forth in Finding 10, cost recovery in the amount of \$8,740 is allowed as the cost of investigation and prosecution pursuant to Business and Professions Code sections 3753.5, subdivision (a), and 3753.7.

5. The matters in Finding 9 have been considered in making the following order.

ORDER

Respiratory Care Practitioner License number 5464 issued to Lorraine A. Eivazians formerly known as Lorraine Fowler is hereby revoked. Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$8,740 in addition to any amount respondent still owes on her original cost recovery order and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If respondent is unable to submit costs timely, she shall instead to submit an explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the respondent is unable to make such payment(s) must accompany this submission.

The filing of bankruptcy by the respondent shall not relieve the respondent of her responsibility to reimburse the Board for these costs.

IT IS SO ORDERED.

The effective date of this decision is July 17, 2006.

DATED: June 16, 2006

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA